

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

Carlos Ray Kidd,)	
)	
Plaintiff,)	
)	Case No. 3:15-cv-52
vs.)	
)	REPORT AND RECOMMENDATION
United States of America,)	
)	
Defendant.)	

Plaintiff Carlos Ray Kidd (Kidd), an inmate at a state prison in Texas, filed an application to proceed in forma pauperis (IFP) and a petition for habeas relief pursuant to 28 U.S.C. § 2241. Kidd alleges that his life is in danger in the Texas state prison where he is confined, and he seeks to be transferred to federal custody. (Doc. #2).

A § 2241 petition must be filed in the district where the prisoner is confined. United States v. Hutchings, 835 F.2d 185, 187 (8th Cir. 1987). Since Kidd is confined in a Texas state prison, this court does not have jurisdiction to consider his petition. Additionally, Kidd's claim—a challenge to the conditions of his confinement—cannot be brought in a § 2241 petition in this circuit or in the Fifth Circuit where Kidd is confined. Spencer v. Haynes, 774 F.3d 467, 470 (8th Cir. 2014); Cook v. Hanberry, 592 F.2d 248, 249 (finding that a prisoner who alleged mistreatment at a prison facility could not bring that claim in a habeas petition). Therefore, transferring Kidd's habeas petition to the appropriate district would be futile.

Kidd's claim would more properly be brought under 42 U.S.C. § 1983. However, as previously noted by this court in a case in which Kidd raised the same claim and requested the same relief, jurisdiction and venue would be proper in the Eastern District of Texas rather than in

the District of North Dakota.¹ Kidd v. United States, D.N.D. Case No. 3:14-cv-89, Doc. #16.

This court does not have the authority to grant the relief Kidd seeks. Id.

Conclusion

This court lacks jurisdiction over Kidd's petition. It is therefore **RECOMMENDED** that Kidd's motion to proceed IFP be **DENIED** and that his § 2241 petition be **DISMISSED** without prejudice.

Dated this 6th day of July, 2015.

/s/ Alice R. Senechal

Alice R. Senechal
United States Magistrate Judge

NOTICE OF RIGHT TO OBJECT

Pursuant to Local Court Civil Rule 72.1(D)(3), plaintiff may file written objections to this Report and Recommendation by July 20, 2015. Failure to file objections may result in the recommended action being taken.

¹ Kidd's previous complaint was filed pursuant to the Federal Tort Claims Act.